IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/01/2003

Coram

The Honourable Mr.Justice V. KANAGARAJ

C.A. No.497 of 2001 and C.A.No. 38 of 2002 C.A.No.1699 of 2002
...

1. Anand
2. Krishnan @ Chetty .. Appellants in
C.A.497/2001

S.Suresh .. Appellant in
C.A.38/2002

B.Domnic .. Appellant in
C.A.1699/2002
-Vs-

State of Tamil Nadu,
rep. by Inspector of Police,
Kothagiri Police Station,
Nilgiris District. .. Respondent in the above C.As.

Criminal Appeals against the judgment dated 19.4.2001 in S.C.No.4 of 2000 on the file of the Assistant Sessions Judge, Ootacamund.

!For Appellants : Mr.V.Gopinath, S.C.
For Mr.L.Mahendran (CA 497/01)
For Mr.T.Jaishankar(CA 38/02)
For Mr.K.Kalyanasundaram(CA 1699/02)

^For Respondent : Mr.A.N.Thambidurai,
Govt.Advocate(Crl.Side)

:COMMON JUDGMENT

Criminal Appeal No.497 of 2001 has been filed by the 1st accused and 5th accused, Criminal Appeal No.497 of 2002 has been filed by the 4 th accused and Criminal Appeal No.1699 of 2002 has been filed by the 3 rd accused against the judgment dated 19.4.2001 rendered by the Court of Assistant Sessions Judge, Octocamund in S.C.No.4 of 2000.

2. For the sake of convenience and for easy reference C.A.No.497 of 2001, C.A.No.38 of 2002 and C.A.No.1699 of 2002 are hereinafter referred to as first, second and third C.As. respectively. So far as all the above Criminal

Appeals are concerned, since the case of the prosecution and the judgment rendered by the lower Court being one and the same, all the above Criminal Appeals are heard together and decided by this common judgment.

3. Tracing the history of the case as projected by the prosecution before the trial court, it comes to be known that the respondent herein in all the above Criminal Appeals has laid the charge-sheet against the appellants and another Sundar, who was arrayed as the 2nd accused before the trial Court, on two specific charges, the first one being, that on 23.5.1999 at about 11.30 P.M. accused 1 to 5 joining hands with each other trespassed into the Shelton Bungalow, located at Door No.41/116 Kothagiri, which is lawfully belonging to one Shanmugam with a common intention to commit dacoity inside the said bungalow and in furtherance of the same, they trespassed into the said house and thus, committed an act punishable under Section 450 of the I.P.C. Secondly, accused 1 to 5 at the time of committing the offence were all armed with knives and they threatened the witness Shanmugam and his wife Prema with the said weapon and committed dacoity of articles worth about Rs.78,000/- such as, one Wall Clock, two transistors, one knife, gold jewels, one binocular and one video cassette and hence, accused 1 to 5 became liable to be punished under Section 395 r/w. 3 97 of the I.P.C.

4. The trial Court having framed the above charges has ordered the trial during which the prosecution, whose duty it is to prove the case beyond all reasonable doubts, has examined 8 witnesses for oral evidence as P.Ws.1 to 8 of whom P.W.1 is the complainant, P.W.2 is the Medical Officer, P.W.3 is the Magistrate, P.Ws.4 and 5 are the independent witnesses, P.W.6 is the Sub Inspector of Police, P.Ws.7 and 8 are the Inspectors of Police and the Investigating Officers.
Besides these oral evidence, the prosecution has also marked 17 documents as Exs.P-1 to P-17 for documentary evidence, Ex.P-1 dated 24.5 .1999 being the complaint launched by P.W.1, Ex.P-2 dated 25.5.1999 being the accident register of the first accused, Exs.P-3 dated 8.6.19 99 being the report of the identification parade conducted by P.W.3 Magistrate, Ex.P-4 being the observation mahazar, Ex.P-5 being the seizure mahazar, Ex.P-6 being the admissible portion of the confession statement of the 1st accused, Ex.P-7 being the seizure mahazar under which M.Os.1 to 11 were seized, Ex.P-8 being the admissible portion of the confession statement of the 2nd accused, Ex.P-9 being another seizure mahazar, Ex.P-10 being the admissible portion of the confession statement of the 3rd accused, Ex.P-11 being another seizure mahazar, Ex.P-12 being the admissible portion of the confession statement of the 4th accused, Ex.P-13 being another seizure mahazar, Ex.P-14 being the admissible portion of the confession statement of the 5th accused, Ex.P-15 being yet another seizure mahazar under which certain articles were recovered in the presence of the witnesses, Ex.P-16 being the F.I.R. and Ex.P-17 being the rough sketch. Besides these, 21 materials objects which are the articles robbed during the dacoity operation from the residence of P.W.1, have been recovered after the confession statements of the accused, along with the weapons used by the accused for the commission of the offence and they have been marked as M.Os.1 to 21.

5. On the part of the defence, though no oral evidence has been let

in, some documents have been marked as Exs.D-1 to D-6 in support of the case of the defence.

6. The trial Court, in consideration of the facts and circumstances of the case of the prosecution, having regard to the materials placed on record and on appreciating the evidence in its own way, would ultimately hold that the prosecution has proved its case beyond all reasonable doubts and would convict all the accused and sentence accused 1 and 5 to undergo R.I. for 10 years, besides each to pay a fine of Rs.5,000/- for the commission of the offence under Section 450 of the I.P.C. and in default to pay the fine amount, to undergo further R.I. for two years and sentence each of the accused 1 and 5 to undergo R.I. for 10 years and to pay a fine of Rs.5,000/- for the offence under Section 395 r/w.397 of the I.P.C., in default to undergo further R.I. for two years and for the other accused, A-2 to A-4, only R.I. for 10 years on each count for the commission of the offences under Sections 450 and 395 r/w.397 of the I.P.C. and the sentence shall run concurrently. It is only challenging the said conviction and sentence ordered by the trial Court, accused 1 and 3 to 5 have come forward to prefer the above Criminal Appeals on certain grounds as pleaded in the grounds of appeal.

7. Though the 2nd accused is undergoing the sentence, he has not preferred any appeal at all.

8. The learned counsel appearing on behalf of the appellants would submit that 3rd and 5th accused are sailing together; that many recoveries made in this case do not relate to the articles said to have robbed at the residence of P.W.1 and they are the items connected with some other case; that the major recoveries are from the 1st and 2nd accused only; that though certain recoveries have been effected from 3 rd accused, they do not belong to this case; that from the 4th accused, the knife was recovered; that from the 5th accused also, as it is in the case of 3rd accused, recovery has been effected, but the said articles are not related to the case in hand; that in the identification parade, all the accused were identified; that the prosecution case is that based on the confession statement of 1st accused, which led to the recovery, the prosecution was able to recover these items.

9. On the part of the appellants, certain judgments would also be produced. They are respectively reported in (1) 2001 (3) S.C.C. 4 51 (KANHAI MISHRA v. STATE OF BIHAR; (2) 1995 SUPP. (4) S.C.C. 448 (SATRUGHANA v. STATE OF ORISSA); and (3) AIR 1924 MADRAS 584 (In re KOTTOORA THEVAN).

10. In the first judgment cited above, it is held that "the circumstantial evidence can be reasonably made the basis of an accused person's conviction if it is of such a character that the same is wholly inconsistent with innocence of the accused and is consistent only with his guilt. The incriminating circumstances for being used against the accused must be such as to lead only to a hypothesis of guilt and reasonably exclude every possibility of innocence of the accused. In a case of circumstantial evidence, the whole endeavour and effort of the Court should be to find out whether the crime was committed by the accused and the circumstances proved form themselves into a complete chain unerringly pointing to the guilt of the

accused. If the circumstances proved against the accused in a case are consistent either with the innocence of the accused or with his guilt, he is entitled to the benefit of doubt."

11. In the second judgment cited above, it is held that, "the unexplained delay in holding the test identification parade would adversely affect the value of evidence of identification where the identification parade was held 1-1/2 long months after the occurrence in question and after expiry of the maximum permissible period for producing the arrested accused before the Court and since there was no explanation for the delay and nothing on record to show that while taking the accused to and producing them before the Court, the identity of the accused was not revealed and the witnesses had at no earlier stage revealed any identifying features, hence, it is held that exclusive reliance could not be placed on such identification and hence, the conviction and sentence set aside."

12. In the third judgment cited above, it has been held that, "on the facts of the case, a conviction for dacoity can be sustained only by the application of Sections 34 and 149, Indian Penal Code and it was necessary to charge and prove that the assembly as a whole had for its common object the committing of dacoity, or that each of the members knew that dacoity was likely to be committed in furtherance of their common object; and that there having been no such charge, the conviction for dacoity was bad and illegal."

13. On such arguments, the learned counsel appearing on behalf of the appellants would pray to allow these appeals setting aside the convicting judgment rendered by the trial Court.

14. On the part of the learned Government Advocate (Criminal Side), he would argue to the effect that the uniform case of the prosecution has been proved by proper oral and documentary evidence and that P. W.1 not only accounts for each and every event that took place at the time of dacoity on a particular day, but also has identified all the accused in the identification parade, besides identifying the articles recovered from the accused. The learned Government Advocate would further submit that just for the simple reason that some of the articles recovered belong to some other cases registered against the accused, in so far as the recoveries made relating to those articles robbed in the case on hand are concerned, they have all been properly done and therefore, the additional recovery made connected to other cases, which are shown in this case, is not in any manner going to affect the case of the prosecution and since the conviction is based on proved evidence and the sentence is awarded in accordance with law by the trial Court after properly appreciating the evidence, no interference need be made into the convicting judgment rendered by the trial Court.

15. A careful study made into the evidence adduced by the witnesses in the context of the facts and circumstances of the case as projected by the prosecution would show that the occurrence had taken place on 23.5.1999 at about 11.30 P.M. when accused 1 to 5 joining hands with each other and all armed with deadly weapons, have gone to the place of residence of P.W.1 and

keeping him under threat of life of himself and his family members, they have gained entry into the house of P.W.1 and robbed the articles shown as M.Os. all worth about Rs.78,000 /- and further posing a threat at the knife point not to make any noise and fearing consequence, the complaint has been launched on the next day at 11.00 A.M. with the Kothagiri Police Station, who would register the case in Crime No.322 of 1999 dated 24.5.1999 under Section 395 of the I.P.C. and investigate the matter during the course of which all the accused were arrested and in pursuance of their confession statements, the articles robbed from the house of P.W.1 have been recovered besides conducting an identification parade for identifying the accused by P.W.1 in which P.W.1 has identified all the accused and hence, the charges for the commission of the offences under Sections 450 and 395 r/w. 397 of the I.P.C.

16. P.W.1 in his evidence deposed to the effect that on hearing the noise of breaking the mirror, which was kept at the verandah, at about 11.30 P.M. on 23.5.1999, he opened the window and saw outside five persons all armed with glittering knives, which were visible in the light of the electric lamp in front of the house, and on their threat of life, he opened the door and all the five accused putting their knives on his neck and at the knife point, they took away the jewels from the cub-board, viz., one necklace, four rings, three small chains and two bangles all weighing 15 sovereign and also two transistors, one video cassette, one binacular, one knife, one wall clock and two wrist watches all worth about Rs.78,000/-, after posing threat not to divulge the information regarding the robbery; and that he would give Ex.P-1 complaint; that thereafter, in the identification parade held after causing the arrest of the accused, this witness would identify all the accused and also identify M.Os.1 to 21. This witness would also depose to the effect that at the time of breaking the mirror at his residence one of the accused got injured in the middle finger of his left hand. He would also give the identification of the injured accused stating that he had a scar on his nose and that was the 1st accused.

17. P.W.2 is the Medical Officer in the Kothagiri Government Hospital at the time of the occurrence and she would examine 1st accused on 25.5.1999 at about 10.15 A.M. who was produced with the police memo and on examination of this witness, she would find that there was a abrasion in his middle finger. She would opine that the injury is simple in nature and the said injury noted by her would have been caused while breaking the mirror.

18. P.W.3 is the Judicial Magistrate-cum-District Munsif, Kothagiri and this witness would depose to the effect that the identification parade was held at Coonoor Sub Jail after sending prior intimation to the said Jail Superintendent immediately on receipt of necessary orders of the Chief Judicial Magistrate wherein P.W.1 and his wife Prema were summoned to identify the accused. But later, P.W.1's wife Prema, due to ill-health, did not participate in the identification parade as a result of which P.W.1 alone was summoned and different identification parades were held in different fashion and P.W.1 would correctly identify all the accused and this witness would submit Ex.P-3 report regarding the identification parade held and the findings therein. This witness would be emphatic even in the cross-examination that each and every time after rearranging the order of the standing of the accused

at different places, P.W.1 identified all the accused correctly touching their bodies.

19. P.W.4 would be at the residence of P.W.1 on 24.5.1999 at about 1 1.00 or 11.30 A.M. and he would depose that the day on which the police came and observed the place of occurrence, they prepared Ex.P-4 observation mahazar; that they also recovered the broken pieces of mirror under the cover of mahazar; and that this witness and another Karthic would sign both the observation mahazar and the recovery mahazar and they would be marked as Exs.P-4 and P-5.

20. P.W.5 would depose that on 24.5.1999, he witnessed the arrest of the 1st accused at the bus stop and immediately after the arrest, the 1st accused gave a voluntary confession which was signed by the first accused and this witness, the admissible portion of which is Ex. P-6 and pursuant to the confession 11 items of properties were recovered from him under the cover of mahazar Ex.P-7 and this recovery mahazar was also signed by P.W.5 Likewise, at different places, the other accused have also been arrested and recoveries were effected pursuant to their confession statements and this witness would attest the confession statements of accused 2 to 5 and also the recovery mahazar which have been marked as Exs.P-8 to P-15 and the articles recovered as M.Os.1 to 21.

21. P.W.6 is the Sub Inspector of Police, who was responsible to register Ex.P-16 F.I.R. in Crime No.322 of 1999 of Kothagiri Police Station under Section 395 of the I.P.C. and he would also send the F.I.R. to the Court and the concerned higher officials for investigation. P.W.7, the Inspector of Police and the Investigating Officer who on receipt of F.I.R. on 24.5.1999 at about 11.00 A.M. would commence his investigation in the said case and would pay visit to the spot and prepare Ex.P-17 observation mahazar in the presence of witnesses and get their attestation on it and he would examine the witnesses who were available there on the spot. This witness would also cause the arrest of the first accused and on his information, the other accused 2 to 5 have been arrested and he would record their confession statements in the presence of the witnesses. In so far as the 1st accused is concerned, since in the dacoity operation, he was found to have been injured on his left middle finger, this accused was subjected to medical examination. P.W.2 would examine the 1st accused on 25.5.1999 and certify the injury and thereafter, this witness would also make arrangements for the test identification parade to be held for the purpose of P.W.1 identifying the accused in the presence of the Magistrate concerned and since in the meantime, this witness was transferred, it was P.W.8 who completed the investigation and laid the chargesheet on 16.7.1999 for the offences punishable under Sections 450 and 39 5 r/w.397 of the I.P.C.

22. In consideration of the facts and circumstances of the case, having regard to the materials placed on record and upon hearing the learned counsel for the appellants and the Government Advocate contra, this Court is able to see that the trial Court, having not only traced the facts of the case of prosecution without giving up even the minute points, but also framing proper point for consideration, has discussed the entire evidence in the

manner required by law. The lower Court has given weightage to the evidence of P.W.1, since he is the eye-witness to the occurrence and also the affected party. P.W.1 would also identify all the accused correctly not only in the test identification parade conducted by P.W.3 Magistrate, but also in the open Court and since the identification of all the accused are flawless coupled with the fact that Ex.P-1 also bears five persons who indulged in the occurrence and therefore, absolutely no doubt need be entertained regarding the involvement of these five accused (A1 to A5) in the said occurrence and hence, the lower Court is right in its placing reliance on the evidence of P.W.1.

23. P.W.2 is the Doctor, who examined the 1st accused for having sustained injury in the middle finger of his left hand while breaking the mirror which was kept in the verandah of the house of P.W.1and this witness would examine the 1st accused and would certify her finding in Ex.P-2 accident register. P.W.3 Magistrate would also conduct the test identification parade in the manner it has to be done in which P.W.1 would identify all the accused correctly. P.Ws.4 and 5 are mahazar witnesses and they have spoken about the role played regarding preparation of Exs.P-4 observation mahazar, arrest of the accused 1 to 5 and their respective confessions recorded and the recovery of M. Os. effected pursuant to their confession statements. P.W.6 Sub Inspector and P.Ws.7 and 8 Inspectors and the Investigating Officers would also do their job towards the investigation of the case in the manner required by law.

24. Regarding the aspects which have been brought forth during the arguments are concerned, the main objection is the recoveries of certain items which are not concerned with this case. For that matter, the recovery of those items, which are concerned with this case, cannot be branded as false recovery. Moreover, from the evidence of P.W.1 and from Ex.P-1, the main items of properties, which were lost, have been clearly spelt out and therefore, so far as the items of articles which are concerned with this case, there cannot be any second opinion and hence, it is safe to conclude that on account of some more recoveries effected from the accused which are not items of properties concerned in this case, but to some other cases, it cannot be said that it would affect the case of the prosecution in any manner.

25. Likewise the judgment cited regarding circumstantial evidence, there is no hypothesis or conjuncture regarding the possibility of the innocence of the accused, since this case is not purely based on circumstantial evidence. Apart from the direct evidence made available from P.W.1, the circumstances also favour the case to be true and genuine and therefore, there is no ambiguity or doubtful circumstances in the case on hand.

26. Secondly, regarding the test identification parade held, it is not the case of any difficulty for P.W.1 to identify the accused, since P.W.1 would depose that in the electric light that was burning outside the house, he was able to see all the five accused and from that identification of the face of the accused, he was also able to identify the accused 1 to 5 correctly in the test identification parade and later in the open Court and therefore, the

identification of the accused cannot in any manner be either doubted or rejected just for the simple reason that P.W.1 did not reveal any identifying feature in Ex.P-1.

27. As a whole, the prosecution has not only put a true case in a believable and trustworthy manner, but also has proved the same with abundant, voluminous and overflowing evidence, both oral and documentary, in the manner required by law in appreciation of which the lower Court has rightly arrived at a conclusion to convict and sentence the accused as aforementioned and hence it does not at all require any interference by this Court.

28. In result,
(i) all the above appeals are without merit and they are dismissed as such; and
(ii) the judgment dated 19.4.2001 rendered in S.C. No.4 of 2000 by the Court of Assistant Sessions Judge, Ootacamund thereby convicting and sentencing the appellants as stated therein is hereby confirmed.

Index: Yes
Website: Yes
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Copy to:

1. The Assistant Sessions Judge, Ootacamund
2. -do- through the Chief Judicial Magistrate, Ootacamund.
3. The Superintendent, Central Prison, Coimbatore.
4. The Inspector of Police, Kothagiri Police Station.
5. The Public Prosecutor, High Court, Chennai.